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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS LEON,

Defendant and Appellant.

D077745

(Super. Ct. No. SCS179354)

APPEAL from an order of the Superior Court of San Diego County,  
Garry G. Haehnle, Judge. Affirmed.

Arthur Martin, under appointment by the Court of Appeal, for  
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 2005, Jose Luis Leon was convicted of second degree murder (Pen.  
Code,<sup>1</sup> § 187, subd. (a)). Leon appealed his conviction, which this court  
affirmed in an unpublished opinion (*People v. Leon* (Mar. 25, 2008, D048306)  
[nonpub. opn.]).

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<sup>1</sup> All further statutory references are to the Penal Code.

In 2019, Leon filed a petition to recall his sentence under section 1170.95. The court appointed counsel and solicited briefing. The court reviewed the record of Leon's conviction, including transcripts, jury instructions, appellate briefs, and the opinion of this court in case No. D048306. The trial court denied Leon's petition by written order. In its order, the court found Leon was not convicted on a probable consequence theory or on a felony murder. The court found Leon was a direct aider and abettor who shared the perpetrator's intent to kill and was an active participant in the crime.

Leon filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) indicating he has not been able to identify any arguable issues for reversal on appeal. Counsel asks the court to review the record for error as mandated by *Wende*. We offered Leon the opportunity to file his own brief on appeal, but he has not responded.

## DISCUSSION<sup>2</sup>

As we have noted, appellate counsel has filed a *Wende* brief and asks the court to review the record for error. To assist the court in its review, and in compliance with *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel has identified the following issues that were considered in evaluating the potential merits of this appeal:

1. Whether the trial court relied on proper items in the record in denying Leon a resentencing hearing; and
2. Whether the trial court erred in finding Leon was ineligible for relief under section 1170.95.

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<sup>2</sup> The facts of the offense are fully set forth in our prior opinion. (*People v. Leon, supra*, D048306.) We will not repeat them here.

We have reviewed the entire record as required by *Wende* and *Anders*.  
We have not discovered any arguable issues for reversal on appeal.  
Competent counsel has represented Leon on this appeal.

#### DISPOSITION

The order denying Leon's petition to recall his sentence under  
section 1170.95 is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

IRION, J.

GUERRERO, J.